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Supreme Court of the United States

OCTOBER TERM, 1922.

No. 576.

CHARLES J. AHRENFELDT,
Appellant,

vs.

THOMAS W. MILLER, as Alien Property Custodian,
Appellee.

BRIEF FOR APPELLANT.

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Statement of the Case.

The appeal and the facts in this case are the same, *mutatis mutandis,* as those presented in the case of *Wesche* (for whom his administrator, The United States Trust Company of New York, is being substituted) vs. *Miller,* No. 292 of the October, 1922, Term of this Court.

The two cases vary only in the following particulars:

1. Ahrenfeldt, this appellant, whose separate petition for leave to intervene was denied, as well as Wesche's, is, instead of a neutral, an American citizen, resident abroad, since January 1st, 1914, in France, England and Switzerland, having, like Wesche, no residence in any judicial district of the United States, during all that time.

2. The deposit of securities and cash with the Commercial Trust Company of New Jersey, which is in question on both appeals, was not made in Ahrenfeldt's name as a co-depositor, but he was the admitted separate owner of an identified portion of the securities and cash, held in that deposit in the joint names of Wesche and Mrs. von Schierholz, which he had entrusted to Mr. Wesche as his agent, with Mrs. von Schierholz as an alternate agent, authorized to act, however, only in case of the death or disability of Mr. Wesche. Mr. Ahrenfeldt's petition for leave to intervene, therefore, related solely to his own separate property.

3. Mr. Ahrenfeldt took a preliminary appeal to the Circuit Court of Appeals for the Third Circuit, instead of appealing direct to this Court from the decree of the District Court. The Third Circuit Court of Appeals, on August 1st last, affirmed the decree of the District Court denying Mr. Ahrenfeldt's petition for leave to intervene, filing the following brief opinion:

"WOOLLEY, *Circuit Judge*:

At the hearing in Commercial Trust Company of New Jersey vs. Thomas W. Miller, as Alien Property Custodian, Fed. , the Appellant, Charles J. Ahrenfeldt, presented a petition for leave to intervene and have determined by the District Court his claim to ownership of a part of the property in process of seizure. The District Court denied the petition holding that the question

sought to be litigated by Ahrenfeldt can be raised only after the demand of the Alien Property Custodian has been complied with, and then only by proceedings authorized by Section 9 of the Act, as amended June 5, 1920. That the District Court was right is established by the decisions of the Supreme Court in Central Union Trust Co. vs. Garvan, 254 U. S. 554 and Stoehr vs. Wallace, 255 U. S. 239.

The order is affirmed." (Record, p. 119.)

The same facts as were presented to the District Court by Mr. Wesche were in like manner presented to that Court by Mr. Ahrenfeldt's petition for leave to intervene and his proposed answer, which *mutatis mutandis*, were the same as those of Wesche. The two petitions for leave to intervene and the two proposed answers were couched in substantially identical terms, and were presented to the District Court at the same time, and subsequently disposed of by that Court at the same time, and in the same manner as that of Wesche, the opinion of the District Court denying both applications, being filed on October 22nd, 1921, long subsequent to the declaration of peace. The decree denying Mr. Ahrenfeldt leave to intervene, like that denying Wesche's application, was entered on January 16th, 1922, and the final decree awarding what was admittedly Ahrenfeldt's property to the Custodian, was entered on January 19th, 1922 (Record, p. 114).

Specifications of Error.

The appellant Ahrenfeldt specifies the same errors as are specified in the brief for Wesche's administrator, and in addition, this appellant

specifies as error that the Circuit Court of Appeals erred in affirming the order of the District Court and in adopting and affirming severally each of the rulings of the District Court involved in its denial of this appellant's petition for leave to intervene, which were there assigned by him as error, and also the following additional particulars:

The Circuit Court of Appeals erred:

1. In affirming the order of the District Court refusing leave to the appellant to intervene in this proceeding.

2. In ruling that the questions sought to be litigated by him could be raised only after the demand of the Alien Property Custodian had been complied with, and then only by proceedings under Section 9 of the Trading with the Enemy Act as amended.

3. In holding that the correctness of the decision of the District Judge was established by the decisions of this Court in *Central Union Trust Co.* vs. *Garvan,* 254 U. S. 554, and *Stoehr* vs. *Wallace,* 255 U. S. 239.

4. In holding that, in view of the provisions of the Fourth Amendment to the Constitution of the United States, an order could be made by the Court in such a proceeding as the present, directing delivery of the property of Mr. Ahrenfeldt to the Alien Property Custodian, save upon probable cause being shown, to the Court granting such order, supported by oath or affirmation to believe Ahrenfeldt's property enemy property.

Brief of the Argument.

The point concerning the right of direct appeal presented under Point XVII of the brief for the United States Trust Company as administrator of Wesche thus disappears from this case, as does also the Custodian's claim that any right of capture of Ahrenfeldt's property was created by the Joint Resolution of July 2d, 1921 or the Treaty of August 25th, 1921 with Germany, which is considered under Point XIII of the brief for the United States Trust Company, as administrator of Wesche.

In all other respects the points and the argument urged on the appeal of Wesche's administrator are directly applicable to this case and are hereby adopted as the argument for the appellant in this case, noting only that Ahrenfeldt's application pertains exclusively to his own individual property and has no reference to any separate property belonging to either Mrs. von Schierholz, Mrs. von Uxküll-Gyllenband, or Mr. Wesche.

This appellant adopts also the matter contained in the brief for the appellant on the other associated appeal of the Commercial Trust Company of New Jersey in case No. 575 of the October Term, 1922, which is in all respects applicable to this case.

On the like grounds as Wesche's administrator, this appellant asks the like relief of reversal of the decree denying his application to intervene and of opening the final decree awarding delivery of the property to the Custodian and denial to the Custodian of the relief sought by him as far as concerns this appellant's property.

Respectfully Submitted,

SELDEN BACON,
Counsel for Appellant.